(*May* 10. 1731.)

MEMORIAL

FOR

His Grace the Duke of *Douglas*, and the Right Honourable the Earl of *Strathmore*, and others, Appellants, concerning the Planting of the Pariſh of *Tealline*,

AGAINST

Alexander Scrimzeour of *Tealline*, and the Synod of *Angus* and *Mearns*.

UPON the Deprivation of Mr. *Glaſs* Miniſter at *Tealline*, in *March* 1730, Application was made to the Presbytery of *Dundee* for moderating a Call toward planting the ſaid Pariſh the Firſt of *July* thereafter by the Appellants: And accordingly the Presbytery appointed a Committee of three Miniſters for moderating in a Call.

At the Moderation of the ſaid Call, Sir *Alexander Wedderburn* of *Blackneſs*, as having Commiſſion from the Managers for the Duke of *Douglas*, and *Alexander Shank* Factor for the Earl of *Strathmore*, and as having Commiſſion from a Quorum of the Managers for his Lordſhip, propoſed Mr. *Robert Preſton* Probationer to be upon the Leet, and, together with a conſiderable Number of Heads of Families, voted for him in the Call; and *Tealline* named Mr. *John Stewart* Miniſter at *Dunkeld*, and, together with certain Heads of Families, voted for him.

It was objected for us againſt Mr. *Stewart*'s being upon the Leet, That he being a ſettled Miniſter, ought not to be called or put upon the Leet for that Purpoſe till firſt other Means were ſeriouſly eſſayed and followed for providing the Pariſh; and that Mr. *Preſton*, againſt whom no Objection could be made, being propoſed, the Moderation ought to proceed in his Favours.

However, the Committee thought fit not to regard the foreſaid ſolid Objection, expreſly founded in the Act of Aſſembly 1694; they proceeded to the Moderation, but did not atteſt the Call in Favours of either Party, but reported the Whole to the Presbytery.

The Presbytery, upon adviſing the Matter, named a Committee of new for moderating in a Call, and ordained certain of their Members to endeavour to bring the Pariſh to a Harmony, to call a young Man according to the Acts of the Aſſembly; and appointed the ſecond *Tueſday* of *October*, viz. the 13th thereof, for moderating the ſaid ſecond Call.

Before the Day prefix'd for moderating the Call, the Presbytery met *pro re nata* at the Deſire of *Tealline*, and delayed the ſaid Moderation till *Wedneſday* the 14th of *October*, upon Pretence that ſeveral of the Heads of Families would be abſent upon the 13th, at a Fair at *Moniefeith*.

Upon the ſaid 14th there was a Market at *Kirrimuir*, belonging to the Duke, in the Neighbourhood, much more conſiderable than the other, which neceſſarily called diverſe of the Heads of Families, who were for Mr. *Preſton*, to their Buſineſs there; and particularly Mr. *Shank* Factor for the Earl of *Strathmore* could not attend their Meeting.

The Committee proceeded, and allowed two Calls to be ſigned in Favours of the reſpective Candidates above-mentioned; and, without atteſting either of the Calls, reported the whole Matter to the Presbytery.

The Presbytery, by a Plurality of Voices, ordained the Call in Favours of Mr. *Stewart* to be atteſted, and they concurred in the ſame; and Appeal being made to the Synod of *Angus* and *Mearns*, they affirmed the Sentence of the Presbytery.

Appeal

Appeal being made from the Sentence of the Synod to the General Aſſembly, it is hoped they'll have more Regard to the Merits of the Queſtion in Favours of the Appellants than either Presbytery or Synod had, and reverſe their Sentence.

The Circumſtances of the Pariſh are, That, according to Mr. *Glaſs*'s Principles, there are at preſent no Elders in it; and the Heritors are only the Duke of *Douglas*, the Earl of *Strathmore*, *Fothringhame* of *Powrie*, and *Tealline*; and the Duke of *Douglas* is Patron of the Pariſh, and accordingly did preſent at the former Vacancy: And, in reſpect of his Grace's Preſentation, the Aſſembly laid aſide an unanimous Call in Favours of another.

Therefore, in conſidering the Merits of the Cauſe, great Regard ought to be had to the Patron's Indulgence in waving his Privilege of preſenting, tho' at the Time when the Call was applied for, by his Concurrence, the ſix Months from the Time of the Vacancy were far from being expired.

In the next Place, the Call muſt be judged by the Act of Parliament 1690. Now the Majority of Heritors were in Favours of Mr. *Preſton*; for there being only four Heritors in the Pariſh, two of them, the Duke of *Douglas*, and the Earl of *Strathmore* were for Mr. *Preſton*, and only *Tealline* himſelf for Mr. *Stewart*; The neceſſary Abſence of the Earl of *Strathmore*'s Factor not being to be regarded, ſince it was occaſioned by the undue Change of the Day, and that he voted for Mr. *Preſton* in the firſt Call, and ſtill declares his Concurrence in the ſecond by his Miſſives produced.

'Tis true, *Fothringhame* of *Powrie* is likewiſe an Heritor in the Pariſh, but he is Minor, and in foreign Countries: And, tho' a Commiſſion was produced from him to vote for Mr. *Stewart*, yet the Presbytery juſtly refuſed it, upon Account of Informalities, and that it was not produced the Time of moderating the Call.

As to the Conſents of the Heads of Families, it is very true, that at the firſt Call Fifty were for Mr. *Stewart*, and Thirty ſeven only for Mr. *Preſton*; and at the ſecond Moderation only Twenty ſix Heads of Families were for him, and Sixty two for Mr. *Stewart*: This Diminuition of Voters for Mr. *Preſton* was occaſioned by their Abſence at the Market of *Kirrimuir*, which held that Day, to which the Moderation was delayed by *Tealline*'s Contrivance.

Further on this Head it is to be obſerved, That *Powrie*'s Factor, who had only a Power to uplift the Rents, being rejected from voting in the Call for Mr. *Stewart*, carried along with him all his Conſtituent's Tenants, without ſuffering them to vote: Whereas it is moſt certain they were for Mr. *Preſton*, and which may be eaſily preſumed from the Factor's hindering them to vote; for, if they had been for Mr. *Stewart*, for whom himſelf was, he would rather have prompted them to it.

And tho' there is a more numerous Appearance of Heads of Families for Mr. *Stewart*, yet *Tealline* acknowledges, that only fifteen of them pay Rent, as is marked in the Minutes of the Presbytery, *Page* 189. all the reſt being Cottars or Servants, and they behoved to vote in the Call upon implicite Faith; for it is acknowledged Mr. *Stewart* never preached in the Pariſh, and that they judged of him only from his Character.

But truly the Approbation of the People is not eſſential to a Call, by the Act 1690, which requires only Heritors and Elders to name a Perſon to the whole Congregation for ſupplying the Vacancy, *to be either approven or diſapproven by them; and if they diſapprove, that the Diſapprovers give in their Reaſons, to the Effect the Affair may be cognoſced upon by the Presbytery.* Now thoſe that diſapproved of the Call given to Mr. *Preſton* by the Majority of Heritors, did not pretend to give in any Reaſons, whereupon the Presbytery might judge; and therefore the Presbytery ought to have concurred with the Call given by the Majority of Heritors, there being no Elders in the Pariſh.

But, in the ſecond Place, the Presbytery and Synod have contraveened the Act 6th, Aſſembly 1694, in more than one Particular: *Firſt*, As was already obſerved, Mr. *Stewart* being a plac'd Miniſter, ought not to have been put upon the Leet till the ſupplying the Vacancy by Probationer had been eſſayed; and conſequently Mr. *Preſton*, a Probationer, being named by the Patron and a Plurality of Heritors, and a conſiderable Number of the Pariſh concurring with their Nomination, and the reſt giving no Reaſon againſt it, the Presbytery ought to have concurred with the Call in Favours of him.

But

But in the next Place, Theſe Judicatories have counteracted the foreſaid Act, which provides, *That Presbyteries ſhall not concur in the Call of a Miniſter already fix'd, or Deſign of tranſporting a Miniſter from one Congregation to another, unleſs, by due comparing of Places, and all Parties concerned, the Diſproportion betwixt them and the greater Good of the Church, be manifeſtly evident.*

Now, in every reſpect the Pariſh of *Dunkeld* is preferable to that of *Tealline*; it antiently was a Biſhop's Seat, is at preſent the Seat of Courts of Judicature, is a Market-town, and his Grace the Duke of *Athol* has his principal Reſidence there: All theſe Conſiderations are expreſly laid down in the Act of Aſſembly 1642, for tranſporting a Miniſter from aothner Pariſh to ſuch Place; And therefore muſt be good Reaſons for keeping one of Mr. *Stewart*'s Parts fixed there, and for reverſing the Judgments given in Support of a Call in order to tranſplant him to this ſmall Country-pariſh, where only one Country-Gentleman reſides.

The greater Good of the Church is another Ground for Tranſportation: But truly, unleſs the greater Stipend of the Pariſh of *Tealline* come under that Conſideration, it lies in Favours of *Dunkeld* by far the more conſiderable and important Charge.

There is one juſt Ground of Complaint more againſt the Proceedings of the Synod; they allowed the Presbytery of *Aberbrothwick* to vote in this Queſtion, who could not poſſibly be diſintereſted, ſince they had previouſly ſuſtained a Call to Mr. *Preſton* one of the Candidates to the Pariſh of *Arbirlot*; and therefore could not but reject his Call to *Tealline*, that they might be conſiſtent with their foreſaid Judgment: Now, it was only by the Votes of this Presbytery that the Majority went in Favours of Mr. *Stewart*.

It is very true, Mr. *Preſton*, in Conſequence of the foreſaid Call, is ſince ſettled at *Arbirlot*; but that cannot prejudice the Right of the Patron and Heritors, and People who concur with them in having the Proceedings of the Presbytery and Synod cognoſced, and have their Judgments reverſed, as being againſt both Civil and Eccleſiaſtical Rules, in order to a new Moderation: For, tho' they had made no Counter-nomination of one to ſupply the Vacancy, theſe Reaſons againſt the Call in Favours of Mr. *Stewart* would be ſufficient to ſet it aſide; and the Judgments complained of muſt be conſidered as the Caſe ſtood when they were given, at which Time Mr. *Preſton* was not ſettled: And indeed, the Presbytery of *Aberbrothwick*'s Concurrance in the Call of him to *Arbirlot*, was only Call to *Tealline*.

In the preſent Caſe it is to be conſidered, that the Patron having made a Nomination, tho' in Concurrence with others by Way of a Call, yet that ought not to prejudice his Right which was not fallen the Time of the Nomination; Patrons ought rather to be encouraged when they uſe their Right in ſuch a tender Manner; and therefore it is hoped the venerable Aſſembly will take this Matter to their ſerious Conſideration, eſpecially, there being no further Steps taken toward the Settlement, than the Presbytery's Concurrence with the Call.

MEMORIAL

FOR

The Duke of *DOUGLAS*, and Others,

AGAINST

Alexander Scrimzeur of *Tealline*, and the Synod of *Angus* and *Mearns*.

1731.